

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1999 SESSION

**FILED**

**December 15, 1999**

**Cecil Crowson, Jr.  
Appellate Court Clerk**

DAVID E. STANLEY,	*	#M1998-00028-CCA-R3-PC
Appellant,	*	DAVIDSON COUNTY
VS.	*	Hon. J. Randall Wyatt, Jr., Judge
STATE OF TENNESSEE,	*	(Post-Conviction)
Appellee.	*	

For Appellant:

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For Appellee:

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OPINION FILED: \_\_\_\_\_

AFFIRMED

GARY R. WADE, PRESIDING JUDGE

## OPINION

As part of a plea agreement, the petitioner, David E. Stanley, entered a guilty plea to possession with intent to sell or deliver over .5 gram of cocaine. He received a Range I sentence of eleven years in the Department of Correction and his trial counsel thereafter filed a motion seeking placement in the boot camp program. Neither the state nor the trial judge resisted the application for placement in the program. Eventually, the petitioner, due to the length of his sentence, was denied boot camp in Wayne County. Afterward, he filed this petition contending that his counsel was ineffective and that, in consequence, his guilty plea was not knowingly and voluntarily made. The trial court denied relief.

The single issue presented for review is whether the petition was properly denied. We affirm the judgment of the trial court.

At the evidentiary hearing on the petition, the petitioner claimed that he entered the plea agreement only because his trial counsel assured him that he would be accepted into the boot camp program and, as a result of his participation, would serve only six months of his sentence. He testified that because his trial counsel had delivered on all of his promises in prior representations, he fully expected results in this instance as well. The petitioner contended that his trial counsel could have ascertained in advance that the length of his sentence disqualified him from participation in the program and was deficient for his failure to do so.

While conceding that he pledged to seek a boot camp sentence, trial counsel denied making any promise that the petitioner would be allowed into the program. Trial counsel asserted that the plea arrangement was a particularly "good

deal" for the petitioner because the state agreed to dismiss other related charges and to withdraw its request for a range enhancement based upon the number of his prior convictions. Trial counsel also described the state's case against the defendant as particularly strong.

At the conclusion of the evidentiary hearing, the trial court determined that the petitioner was afforded the effective assistance of counsel. It rejected his claim that he had been guaranteed participation in the boot camp program.

In a post-conviction case, the burden is on the petitioner to prove the allegations of fact by clear and convincing evidence. Tenn. Code Ann. § 40-30-210(f) (1997). The findings of fact made by the trial court are conclusive on appeal unless the evidence preponderates otherwise. Butler v. State, 789 S.W.2d 898, 899 (Tenn. 1990).

When a petitioner claims that he has been denied the effective assistance of counsel at trial, the determinative issue is whether the advice given or the services rendered by the attorney were within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). To prevail on a claim of ineffective assistance of counsel, a petitioner must show that counsel's representation was deficient and he suffered prejudice as a result. Strickland v. Washington, 466 U.S. 688 (1984). As applied to guilty pleas, the requirement of prejudice is established when the petitioner demonstrates that there is reasonable probability that, but for counsel's errors, the petitioner would not have entered a plea of guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

In our view, the evidence supports the conclusions reached by the trial court. At the evidentiary hearing, the petitioner acknowledged that he was guilty as charged. The transcript of the guilty plea, which contains no reference to a boot camp sentence, supports the testimony of the petitioner's trial counsel. The trial court accredited the testimony of trial counsel, who denied the existence of any promise that the petitioner would receive a boot camp sentence. The plea agreement, when viewed in its entirety, appears to be favorable to the petitioner. Most importantly, the petitioner has failed to establish by clear and convincing evidence that he was denied the effective assistance of counsel and that, but for any deficiency in performance, he would have pled not guilty and would have insisted upon a trial.

Accordingly, the judgment is affirmed.

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Gary R. Wade, Presiding Judge

CONCUR:

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John H. Peay, Judge

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Norma McGee Ogle, Judge